

## **CIVIL SERVICE COMMISSION MINUTES**

**May 7, 2003**

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Barry I. Newman  
Marc Sandstrom  
Gordon Austin  
A.Y. Casillas

Absent was:

Sigrid Pate

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES  
May 7, 2003

1:15 p.m.           CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m.           OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>1,4,6,7,8,9,10,13,14</u>		<u>11,12</u>	<u>5</u>
<u>15,16,17,18,19,20,26</u>			

COMMENTS Motion by Casillas to approve all items not held for discussion; seconded by Austin. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

A. Commissioner Pate: Richard Pinckard, Esq., on behalf of **2003/0001\***, Deputy Sheriff, appealing an Order of Pay Step Reduction, Removal of Training Officer Premium and Charges from the Sheriff's Department.

B. Commissioner Pate: Richard Pinckard, Esq., on behalf of **2003/0002\***, Deputy Sheriff, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

C. Commissioner Sandstrom: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Rosalinda Grant**, Nurses Assistant, appealing an Order of Suspension and Charges from the Health and Human Services Agency.

D. Commissioner Newman: **Judy Nelson**, former Registered Veterinary Technician, appealing an Order of Termination and Charges from the Department of the Animal Control.

E. Commissioner Sandstrom: Douglas Oden, Esq., on behalf of **Joseph Jones**, former Residential Care Worker II, appealing an Order of Removal and Charges from the Health and Human Services Agency.

F. Commissioner Sandstrom: James Stevens, Esq., on behalf of **Pazleona Espejo**, Personnel Aide, HHSA, alleging age, ethnicity and non-job-related factor (favoritism) discrimination by the Department of Parks & Recreation.

**OPEN SESSION AGENDA**  
**County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and the President of the Commission approves it.

## MINUTES

1. Approval of the Minutes of the regular meeting of April 2, 2003.

**Approved. Commissioner Sandstrom will amend his recommendation on Item No. 9. Staff will distribute approved Minutes subsequent to Commissioner Sandstrom's amendment.**

2. Approval of the Minutes of the special meeting of April 15, 2003.

**Approved.**

## CONFIRMATION OF ASSIGNMENTS

3. Commissioner Newman: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Guy Munshower**, Building Inspector II, appealing an Order of Suspension and Charges from the Department of Planning and Land Use.

**Confirmed.**

## COMPULSORY LEAVE

### Appeals

4. **Maurice Lawrence**, Stock Clerk, appealing his placement on Compulsory Leave by the Health and Human Services Agency (HHSA).

RECOMMENDATION: Grant Request.

**Staff Recommendation approved. Commissioner Pate assigned.**

Commissioner Newman requested that the Consent Calendar be reconsidered regarding Item No. 4.

**Motion by Casillas to reconsider Consent Calendar for the purpose of discussing Item No. 4 of this Agenda; seconded by Newman. Carried.**

Commissioner Newman invited the Commission's attention to the staff report regarding this item. He relayed that there should be no confusion regarding the Commission's latitude and its obligation in considering late filing of appeals. He further stressed that the Commission should not set precedent that a one or two day late appeal becomes standard acceptance. Commissioner Newman suggested that at the very least, the Commission should hear from the Appellant and the Department regarding "good cause" for filing a late appeal.

**Motion by Newman to accept staff report; seconded by Sandstrom. Carried**

## WITHDRAWALS

5. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Nancy Brown**, Probation Aide, appealing the Department of Human Resources' (DHR) determination that she is ineligible to compete in the recruitment

for the classification of Deputy Probation Officer. (Held in abeyance since the meeting of June 19, 2002.)

**Withdrawn.**

## **DISCIPLINES**

### **Findings**

6. Commissioner Pate: Richard Pinckard, Esq., on behalf of **2003/0001\***, Deputy Sheriff, appealing an Order of Pay Step Reduction, Removal of Training Officer Premium and Charges from the Sheriff's Department.

#### **FINDINGS AND RECOMMENDATIONS:**

The matter of the appeal of 2003/001, from a written Order of Pay Step Reduction, Removal of Training Officer Premium and Charges reducing the pay and removing the training officer premium of 2003/001 in his/her class and position of Deputy Sheriff (Class No. 5746) in the Sheriff's Department, was presented to the Civil Service Commission. The Commission appointed Mary Gwen Brummitt, one of its members, to hear the appeal and submit findings and recommendations to the Civil Service Commission. However, this hearing was later reassigned to Commissioner Sigrid Pate. Prior to the commencement of the hearing the parties entered into a stipulated agreement.

As part of the agreement, the originally imposed Order of Pay Step Reduction, Removal of Training Officer Premium and Charges will be reduced to a written reprimand and the Sheriff's Department will reimburse 2003/001 for back pay deducted as a result of the original discipline. The agreement also states that 2003/001's training officer status will not be restored, however, he/she will be eligible for appointment as a training officer should the department so choose. Additionally, Richard Pinckard, Esq., on behalf of 2003/001, has submitted a letter withdrawing his/her appeal before the Civil Service Commission.

The hearing officer has reviewed the stipulated agreement and letter of withdrawal and has determined that the public would be best served if the Commission approves the agreement and accepts the withdrawal of appeal. It is therefore recommended that the stipulated agreement and the personnel actions contained within it be approved by the Civil Service Commission; that the Civil Service Commission accept the withdrawal of 2003/001's appeal of the Order of Pay Step Reduction, Removal of Training Officer Premium and Charges; that 2003/001 be awarded back pay, benefits and interest as set forth in the stipulated agreement; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Casillas to approve Findings and Recommendations;  
seconded by Sandstrom. Carried.**

7. Commissioner Pate: Richard Pinckard, Esq., on behalf of **2003/0002\***, Deputy Sheriff, appealing an Order of Pay Step Reduction and Charges from

the Sheriff's Department.

**FINDINGS AND RECOMMENDATIONS:**

The matter of the appeal of 2003/002, from a written Order of Pay Step Reduction and Charges reducing the pay of 2003/002 in his/her class and position of Deputy Sheriff (Class No. 5746) in the Sheriff's Department, was presented to the Civil Service Commission. The Commission appointed Sigrid Pate, one of its members, to hear the appeal and submit findings and recommendations to the Civil Service Commission. Prior to the commencement of the hearing the parties entered into a stipulated agreement.

As part of the agreement, the originally imposed Order of Pay Step Reduction and Charges will be reduced to a written reprimand and the Sheriff's Department will reimburse 2003/002 for back pay deducted as a result of the original discipline. Additionally, Richard Pinckard, Esq., on behalf of 2003/002, has submitted a letter withdrawing his/her appeal before the Civil Service Commission.

The hearing officer has reviewed the stipulated agreement and the letter of withdrawal and has determined that the public would be best served if the Commission approves the agreement and accepts the withdrawal of appeal. It is therefore recommended that the stipulated agreement and the personnel actions contained within it be approved by the Civil Service Commission; that the Civil Service Commission accept the withdrawal of 2003/002's appeal of the Order of Pay Step Reduction and Charges; that 2003/002 be awarded back pay, benefits and interest as set forth in the stipulated agreement; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Casillas to approve Findings and Recommendations;  
seconded by Austin. Carried.**

8. Commissioner Sandstrom: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Rosalinda Grant**, Nurses Assistant, appealing an Order of Suspension and Charges from the HHSA.

**FINDINGS AND RECOMMENDATIONS:**

Employee was charged with Cause I - Conduct Unbecoming an employee of the County (causing injury to resident); Cause II - Negligence resulting in significant risk of harm to the public; Cause III - Failure of Good Behavior; and Cause IV - Act or Acts which are Incompatible with or Inimical to the Public Service. Employee has been employed by the County since 1990. She has been assigned to Unit B-3 at Edgemoor Hospital for approximately 2 ½ years. At the time of her appeal, she held the position of Certified Nurse's Assistant.

The conduct at issue in the appealed discipline involved an incident occurring on September 24, 2002. It involved Employee's alleged treatment and interaction with a particular resident patient at the hospital. At the Commission hearing, the following facts were undisputed: the Resident's residency at Edgemoor Hospital was the result of an aneurysm, and she was known to be especially fussy and prone to

loud verbal outbursts. Her verbal outbursts often consisted of overreactions to verbal or physical stimuli. The patient's medication had been twice modified, however there was conflicting testimony as to the extent of her improvement on September 24 when Employee allegedly mishandled the Resident. There was testimony that the Resident, at the time of the alleged incident, had a preexisting condition involving leg pain.

At the Commission hearing, there was testimony that the Resident went on to tell her that when Employee was placing her in bed, her leg hit the bed rail and was hurting, and that Employee ignored her when she asked her to stop. Employee was instructed to take leave for the rest of the shift and depart from Unit B-3 and that State law requires employees to be separated from potential contact with the resident at issue when there has been an allegation of abuse. Due to past controversy at Edgemoor Hospital, Agency staff is vigilant about reporting all incidents of alleged abuse to the Health Care Financing Administration (HCFA) of the State of California Department of Health and Human Services. Within three days of the incident, an HCFA investigator came to the Edgemoor Hospital and interviewed the Patient and certain witnesses. The HCFA investigator also interviewed Employee who denied the allegations. The investigator found two "deficiencies" with regard to "Patient Rights". The Agency also conducted its own investigation of the allegations. The Agency proved that Employee mishandled the Resident. Although the Resident may have suffered from impaired cognitive abilities, her recounting of the facts in two separate interviews, days apart, were consistent with each other. While Employee's conduct appeared to be unintentional, it was negligent and improper. The Agency failed to prove that Employee visited her after the incident to question her about what she reported to Hospital staff. The lone hearsay statement contained in HCFA Statement of Deficiencies, if even admissible, is simply insufficient to prove this allegation. It appears that the Agency's Personnel Officer reached the same conclusion in her November 8, 2002 memo. The Agency proved the charges contained in Causes I(a) and II(a). However, the Agency failed to prove the charges contained in Causes I(b) and II(b). Employee is guilty of Cause I, Cause II, Cause III, and Cause IV. It is therefore recommended that the Order of Suspension and Charges be reduced from a suspension of fifteen (15) work days to a suspension of seven (7) work days; that Employee will be awarded back pay, benefits, and interest for any work days for which she served her suspension in excess of seven days, minus any wages she received from outside employment; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Sandstrom to approve Findings and Recommendations;  
seconded by Austin. Carried.**

9. Commissioner Newman: **Judy Nelson**, former Registered Veterinary Technician, appealing an Order of Termination and Charges from the Department of the Animal Control.

**FINDINGS AND RECOMMENDATIONS:**

Employee is guilty of Cause I - Incompetency (failure to possess or

maintain California state registration as a Registered Veterinary Technician in a current, valid status; Cause II - Dishonesty.

Employee has been employed by the Department of Animal Control since January 2002. During that time she held the classification of Registered Veterinary Technician. She has no record of prior discipline and her one employee performance appraisal contains an overall "above standard" rating. In October 2001, Employee applied for the classification of Registered Veterinary Technician in the Department and her application certified that she was currently registered with the State as licensed Animal Health Technician. At the time of the application, Employee noticed that the card was in her maiden name and contacted the Board to have the name corrected. On October 23, 2001, the Board sent Employee a letter informing her that her registration had expired and ordered her to cease any activities for which registration is required. The letter further notified her that her registration had expired more than five years ago and therefore could not simply be renewed by paying the five-year renewal fee. The letter explained that in order to avoid needing to re-qualify for the registration, she would have to petition for re-issuance by completing certain steps specified in the letter. Thereafter, she petitioned for re-issuance of her registration. Subsequently, Employee was hired by the Department and she did not inform the Department of the expiration of her registration, nor of the order that she should abstain from performing any work requiring such registration. In April 2002, Employee was on the agenda regarding the re-issuance matter. However shortly before the Board meeting, her matter was taken off the agenda. While performing a routine check on the registration of the Department employees, it was discovered that Employee's registration status was delinquent. Thereafter, Employee was terminated.

The Department proved that Employee did not hold a current and valid registration, and therefore was not qualified for the classification of Registered Veterinary Technician. The Department failed to prove that, at the time of the application, Employee knew her registration had expired. The Department did not charge her with any subsequent dishonesty. The Department proved the charges under Cause I of the Order of Termination and Charges. Accordingly, Employee is "incompetent" to hold the classification of Registered Veterinary Technician, not because she performed her work poorly, but because she is not qualified for the classification. Employee is guilty of Cause I, incompetency. Employee is not guilty of Cause II. It is therefore recommended that the Order of Termination and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Newman to approve Findings and Recommendations;  
seconded by Sandstrom. Carried.**

10. Commissioner Sandstrom: Douglas Oden, Esq., on behalf of **Joseph Jones**, former Residential Care Worker II, appealing an Order of Removal and Charges from the HHSA.

#### FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Conduct Unbecoming an Officer or Employee of the County (Engaged in acts of domestic violence); Cause II - Negligence Resulting in Harm or Significant Risk of Harm to the Public

and Public Service; Cause III - Insubordination; Cause IV - Failure of Good Behavior; and Cause V - Acts Incompatible with or inimical to Public Service. Employee has worked for the Health and Human Services Agency since December 15, 2000. He started as a Residential Care Worker I (RCW I) was promoted to RCW II, and then Protective Services Worker I (PSW I). At the time of the incidents leading to the subject termination, Employee was in his probationary period as a PSW I. At the commencement of the Commission hearing, the parties stipulated that the hearing be closed to the public and the record be sealed because of the inclusion of privileged juvenile court information throughout the evidence and testimony. The charges contained in the Order of Removal and Charges pertain to alleged incidents which occurred outside of Employee's employment but which the Agency argues are incompatible and unacceptable with his classification. At the Commission hearing, evidence and testimony established the following: Prior to his employment with the County, Employee was involved in two incidents that came to the attention of public authorities relating to domestic violence. In 1992 Employee received a criminal conviction as a result of an incident of domestic violence pertaining to his wife. In 1999, the Agency's Child Protective Services conducted an investigation relating to an incident in which it was alleged that Employee assaulted his wife in front of his children. In late 2000, Employee applied for employment with the Agency. Either a background check was not performed or, if one was performed, it did not reveal the 1999 incident. The Agency provided testimony that, had a background investigation or proper screening been performed, either of the incidents would have been sufficient to disqualify him from employment.

Employee's wife operated a child daycare facility from their home, which appeared to be properly licensed. Employee and his wife also had several children of their own. In approximately November 2000, the Agency investigated a serious allegation at the child daycare facility. Results of the investigation identified areas of concern that followed with certain corrective actions. Subsequently, another incident occurred on June 21, 2002 at the facility. On June 23, 2002, when Employee's wife learned of the incident, she consulted a church official and, in turn, reported it to local law enforcement authorities. When Employee learned about the incident, he was upset that his wife did not call him first. At the hearing, he explained that he did not want his superiors at the Agency to learn about the incident before he knew about it and had an opportunity to inform his supervisor himself. A short while later, Employee encountered his wife driving as he was returning home. He honked his horn and his wife pulled over. She got out of the car and entered his car, while the two children that were with her remained in her car. From this point forward, the evidence and testimony at the Commission hearing was conflicting. Employee downplayed the interaction between he and his wife as simply a heated discussion. However, it was serious enough that someone who witnessed it called the police. The preponderance of evidence indicates that the June 23, 2002 interaction between Employee and his wife was serious enough to be considered an incident of domestic violence. The June 23, 2002 incident combined with the 1992 conviction and the 1999 investigation provide sufficient cause to support the Agency's Order of



Removal. The Agency proved all of the charges in the Order of Removal and Charges except those contained under Cause II. Employee is, unfortunately, employed in one of the few professions for which his domestic problems make him unsuited. Employee is not suited to deal with other families' domestic problems. His classification requires control of emotions, the ability to maintain objectivity and to take appropriate actions. The risk to the County and its wards and clients is simply too high. That being said, it appears that Employee performed well and received several promotions while employed by the County. Therefore, he likely would perform well in many other types of work. Employee is guilty of Cause I, Cause III, Cause IV, and Cause V. Employee is not guilty of Cause II. It is therefore recommended that the Order of Removal and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Sandstrom to approve Findings and Recommendations;  
seconded by Austin. Carried.**

## **DISCRIMINATION**

### **Complaints**

11. **Edmond Wollmann**, former Eligibility Technician, HHSA, alleging gender, race, religion and retaliation discrimination by the HHSA.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Casillas assigned.**

12. Marc Levine, Esq., on behalf of **Brenda Daly**, Deputy District Attorney IV, alleging harassment, retaliation and political affiliation discrimination by the Office of the District Attorney.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Austin assigned.**

### **Findings**

13. Commissioner Sandstrom: James Stevens, Esq., on behalf of **Pazleona Espejo**, Personnel Aide, HHSA, alleging age, ethnicity and non-job-related factor (favoritism) discrimination by the Department of Parks & Recreation (DPR).

### **FINDINGS AND RECOMMENDATIONS:**

The matter of the appeal of Pazleona Espejo, Personnel Aide, Health and Human Services Agency was duly noticed and came on for hearing on April 14, 15 and 16, 2003. The Commission appointed Marc Sandstrom to hear the appeal. Appellant filed a complaint with the Commission on August 29, 2002, alleging age, ethnicity and non-job-related factor (favoritism) discrimination when she was failed while on probation in the classification of Departmental Personnel Officer II (DPO II) by the Department of Parks and Recreation.

Employee was hired by the County in April 1988 as an Intermediate Clerk Typist. Throughout her employment Employee has been consistently rated in her performance appraisals as overall "above standard" with many individual category ratings of "outstanding." Employee was ultimately selected by DPR as a DPO II from among approximately 8 applicants and began her new job on February 8, 2002.

Employee was hired by Acting Director of the DPO, Sharon Geraty. Ms. Geraty was ultimately, not selected to be the permanent Director of the Department. Instead, Renee Bahl was selected. Prior to departing the Department, Ms. Geraty also hired Patricia Saly as the Administrative Services Manager in the DPO. Ms. Saly became Employee's immediate supervisor. The evidence showed that it was her recommendation upon which the Department relied in making its decision that Employee be failed on probation.

Ms. Tominia was hired and it became apparent Ms. Saly was grooming her for Employee's position. It appeared Ms. Tominia was motivated to provide her experience in a full range of duties, including those related to personnel. It was obvious from the testimony at the hearing that Ms. Saly and Ms. Tominia had a great deal of mutual respect and enjoyed each other's company which included lunches several times a week. It was clear that Employees' dismissal was inconsistent with both the stated reasons for her promotion as well as the stated reasons for her dismissal. By the end of the hearing, this fact had been so clearly established that the Department essentially admitted that she was treated unfairly. However, in its closing, the Department's counsel argued vigorously that even in such circumstances, a probationary dismissal must stand if it was based on a perceived job related factor. The arbitrariness and unfairness of Employee's dismissal was highlighted by the following: Ms. Geraty, with Mr. Copper's advice, selected Employee under the criteria that they wanted someone who could learn and "grow" with the Department rather than, as Ms. Saly phrased it, someone who was "Fully Formed." Under this criteria, Employee was particularly suited as evidenced by her record of hard work, accomplishment and promotion. For the first two months of her probation, according to Ms. Geraty's testimony, she performed admirably. That was the situation until Ms. Geraty left and Employee was placed under her new supervisor, Ms. Saly. If the Department's position is to be believed, the criteria for Employee's position were changed midstream such that it now, under Ms. Saly, needed someone who immediately possessed every personnel skill. Moreover, this change essentially occurred in stealth. Employee was never given any objectives or goals by Ms. Saly. While Ms. Saly testified that she advised Employee of her errors and mistakes, it appeared that such comments were made in passing, and related to minor items. Even on their face, Employee's alleged errors appeared trivial. Additionally, Ms. Saly's notes which were offered to support her allegations of Employee's deficiencies, contained several credibility issues. It was also troubling that Employee was dismissed based on three out of five months under Ms. Saly without the benefit of a mid-probation performance appraisal which was due in only three weeks; or even the benefit of an oral warning. Additionally, Ms. Saly and Ms. Bahl admitted that they did not take into consideration Employee's

performance during the months Ms. Geraty was her direct or indirect supervisor. The failure to review her prior record and first three months of probation employment, especially where only five months were under consideration, adds to the implication of another reason for the dismissal.

Despite the Department's alleged immediate need for a Personnel Officer with experience in all aspects of the job including the PeopleSoft program, it did not acquire a new Personnel Officer to replace her until 8 months after her dismissal. While in the interim Ms. Tominia and another employee split Employee's duties, they were available to assist while Employee was still in the Department. Clearly, the Department could have retained her a while longer, at least through her mid-probation evaluation and basic PeopleSoft training. Given her history of above standard performance, it is likely she would have learned the alleged missing skills well before the new Personnel Officer was hired. The evidence and testimony at the Commission hearing demonstrates that the Department relied too heavily upon Ms. Saly in dismissing Employee. The Department obtained very little corroboration of Ms. Saly's allegations of poor performance. The weakness of the Department's evidence concerning Employee's alleged poor performance created an implication that its allegations were pretextual. The evidence regarding the relationship between Ms. Saly and Ms. Tominia further established that the Department's allegations against Employee were a pretext for her dismissal based on favoritism, a non-job related factor. Additionally, as friendly as Ms. Saly and Ms. Tominia were with each other, Ms. Saly was equally standoffish with Employee. Therefore, it is recommended that Employee's complaint of discrimination be sustained on the basis of favoritism, a non-job related factor; that the Civil Service Commission determine that her dismissal during probation was not caused by discriminatory motive based on ethnicity or age; that Employee be awarded back pay, benefits and interest from the date of her failure of probation to the date of this decision in an amount equal to the difference in pay that she received during that period as a Personnel Aide and the amount she would have received as a Personnel Officer II; that Employee continue to be paid as a Personnel Officer II pending resolution of No. 5 below; that Employee be placed on a transfer list for Personnel Officer II with a goal that an appointment be made as soon as possible; that Employee's personnel files at the Department of Parks and Recreation, DHR and HHSA be purged to exclude any reference to a failure of probation; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Sandstrom to approve Findings and Recommendations;  
seconded by Casillas.**

Commissioner Austin stated that this matter showed a complete and deliberate disregard for the merit system of the County of San Diego, and further showed the necessity of maintaining the functions of the Civil Service Commission.

**Friendly Amendment to Motion by Austin to send a copy of this  
report to the personal attention of the Chief Administrative  
Officer, Walt Ekard; seconded by Casillas. Carried.**

14. Commissioner Sandstrom: **Dennis Panish**, Deputy District Attorney III, alleging political affiliation discrimination by the former District Attorney. (See No. 15 below.)

#### FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on January 15, 2003, the Commission appointed Marc Sandstrom to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of discrimination based on political affiliation by the former District Attorney, and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that this complaint be denied; that the Commission approve and file this report with the appended OIA Final Investigative Report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Sandstrom to approve Findings and Recommendation; seconded by Austin. Carried.**

#### SELECTION PROCESS

##### Complaints

15. **Dennis Panish**, Deputy District Attorney III, appealing the selection process used by the DHR and the former District Attorney for the classification of Deputy District Attorney IV. (See No. 14 above.)

RECOMMENDATION: Take action pending the outcome of the discrimination complaint.

The Commission requested a revised recommendation from Staff subsequent to Item No. 14 above having been read. Larry Cook, Executive Officer recommended that Mr. Panish's request for a Rule X selection process hearing be denied, based on OIA'S investigative report and the report of Commissioner Sandstrom in Item No. 14 above.

**Motion by Sandstrom to deny request; seconded by Austin. Carried.**

16. **David Meyers**, Sheriff's Sergeant, appealing the selection process used by the Sheriff's Department for the Classification of Sheriff's Lieutenant.

RECOMMENDATION: Deny Request.

Mr. Meyers addressed the Commission stating that his motive is to prove the mismanagement of the Sheriff's EPR system.

Tom Reed, representing the Sheriff's Department explained that the promotion process includes review of training and personnel files. If a document is missing from a file, a supervisor can re-create and re-issue the missing document(s). Mr. Reed stated that Employee had approximately 2 months to "fill in the blanks". The job announcement tells candidates to read and make sure their file is current. Further, Mr. Meyers is familiar with the Sheriff's system, and is himself a

supervisor. Mr. Reed stated that the Department has global deficiencies in this regard, however a task force has been assigned to remedy the deficiency.

The Commission stressed that performance evaluations are working management tools that are required by County policy and procedure. Further, it seems unsound to re-create a document after a substantial amount of time has passed.

The Commission asked staff what remedies were available should it grant a Rule X hearing to Mr. Meyers. Larry Cook, Executive Officer explained that the Commission has broad authority, however cannot promote an individual. The Commission can determine that the selection process was flawed and should be redone.

**Motion by Austin to grant a Rule X hearing; seconded by Casillas.**

Discussion ensued as to whether the entire selection process can be thrown out. It was decided that the hearing must be open to any possibility to ensure a fair and equitable process.

**Motion carried. Commissioner Sandstrom assigned.**

<b>AYES:</b>	<b>Sandstrom, Austin, Casillas</b>
<b>NOES:</b>	<b>Newman</b>
<b>ABSENT:</b>	<b>Pate</b>
<b>ABSTENTIONS:</b>	<b>None.</b>

## **Findings**

17. Commissioner Austin: Shadi Shaffer, Esq., on behalf of **Valerie Lough**, Paralegal I, Office of the District Attorney, appealing the selection process used by DHR and the Office of the District Attorney for the classification of Investigative Specialist II.

## **FINDINGS AND RECOMMENDATIONS:**

At the regular meeting of the Civil Service Commission on March 19, 2003, the Commission assigned Commissioner Gordon Austin to conduct a hearing on the appeal of Appellant regarding various personnel actions that resulted in DHR denying her application for Investigative Specialist II and ultimately classifying her duties as a Paralegal I rather than a Paralegal II in the Office of the DA.

Appellant has presented to the Commission various disputed personnel actions taken by DHR and the DA that have allegedly resulted in her being disadvantaged. Some of these disputed matters were caused in part by mistakes made by the County. For example, the DA's office intended to hire her as a Legal Assistant I, but she was actually hired as an Investigative Specialist I. She was paid as an Investigative Specialist I, but she was given performance appraisals as a Legal Assistant I. Another error relating to Appellant's complicated personnel issues is that when she applied for Investigative Specialist II, she was denied by DHR because its records showed that she was never an Investigative Specialist I, but rather a Legal Assistant I.

Remedies requested by Appellant are stated in writing as follows: "a. Promote me to IS 2 step 5 retroactively effective 12/17/02 (as it would

have happened had my classification not been changed), making me eligible to be reclassified as a Paralegal 2. b. Easier and cheaper than option a - simply grandfather me into the paralegal 2 class step 4 effective 1/10/03". At the Commission hearing, Appellant introduced into evidence a chart reflecting the historical employment status of herself and a fellow employee whose name was held confidential. The chart was uncontested by the DA or DHR in terms of content. It reflected two employees with similar employment backgrounds, but who are now approximately \$6,000/year apart in salary. The chart shows that Appellant's fellow employee was hired by the DA at approximately the same time as she was, and that the fellow employee remained as an Investigative Specialist I rather than converting to Legal Assistant I. The fellow employee applied for Investigative Specialist II in September 2002 and was accepted, in part, because she had at least one year of experience as an Investigative Specialist I. The chart further shows that the fellow employee's duties were reclassified to Paralegal II rather than Paralegal I, which resulted in the higher salary.

Reaction of the DA and DHR representatives to the above information was that Appellant made her own choice to self-demote from Investigative Specialist I to Legal Assistant I in April 2002. The DA did not put any pressure on her to make this change, and the DA had no knowledge of future results of the classification study. The DA representative suggested that Appellant is time barred from an appeal to the Commission based on the date of her rejection and the date of her appeal. The undersigned Hearing officer rejects that suggestion in that Appellant had verbal and written communication with the DA within fifteen (15) days of filing with the Commission.

The hearing officer has empathy for Appellant considering the very complicated issues she has endured in order to seek fair treatment. Unfortunately for her, she made a personal decision in April 2002 to self demote, which caused a rippling effect in her future promotional opportunities. Although she claims that a DA representative told her that her future promotional opportunities would not be negatively impacted as a result of the classification change, the DA representative testified credibly at the Commission hearing that he genuinely attempted to assist her, but he made no promises. In addition, other DA managers testified credibly at the Commission hearing that they did not influence her to change from Investigative Specialist I to Legal Assistant I, and they did not promise that she would be protected from future personnel actions. It is therefore recommended that Appellant's appeal be denied; that a recommendation be given to the DA and the Director of Human Resources to consider implementing the provisions of Compensation Ordinance Section 1.3.9 (EQUITABLE ADJUSTMENT) at a time in the future if Appellant is placed on an employment list for Paralegal II. The equitable adjustment (if any), would take into consideration the contents of this report and any other pertinent information available to the DA and Director of DHR; that the Commission read and file this report; and that his proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Austin to approve Findings and Recommendations;**

**seconded by Sandstrom.**

Commissioner Newman concurs with the recommendation to deny the request, however does not concur with second part of the recommendation relating to equitable adjustment. He strongly feels that Employee made a strategic decision and modest errors were made on the part of the County.

**Motion Carried.**

**AYES:** Sandstrom, Austin, Casillas  
**NOES:** Newman  
**ABSENT:** Pate  
**ABSTENTIONS:** None

## **SEPARATION**

### **Findings**

18. Commissioner Newman: **Michele Virgilio**, former Intermediate Clerk Typist, appealing a Notice of Separation for Failure to Return After Leave from the Department of Housing and Community Development.

### **FINDINGS AND RECOMMENDATIONS:**

The matter of the appeal of Michele Virgilio, from a written notice informing her that, pursuant to Civil Service Rule 14.2.3, she has been separated from her class and position of Intermediate Clerk Typist (Class No. 2700) in the Department of Housing and Community Development ("DHCD") due to her failure to return to work after the expiration of an approved leave of absence, was presented to the Civil Service Commission. The Commission appointed Barry I. Newman, one of its members, to hear the appeal and submit findings, conclusions and a proposed decision to the Civil Service Commission. Thereafter, the matter was duly noticed and came on for hearing on April 30, 2003.

The Appellant did not appear for the hearing in person or through a designated representative. It was subsequently established that there were no extenuating circumstances to excuse Appellant's absence; that the Commission determine that the Appellant has abandoned her appeal; It is therefore ordered that Employee's Separation from County service be affirmed, effective November 20, 2002; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Newman to approve Recommendations and Proposed Decision; seconded by Casillas. Carried.**

## **RECONSIDERATION**

19. **Jane Via**, Deputy District Attorney IV, requesting reconsideration of the Commission's March 19, 2003 decision to not consider her selection process complaint until after May 16, 2003. Ms. Via is appealing the selection process used by DHR and the former District Attorney for the classification of Deputy District Attorney V.

RECOMMENDATION: 1) Consider Ms. Via's request for reconsideration; and  
2) Allow input from parties regarding selection process issues.

**Motion by Austin to accept reconsideration; seconded by Sandstrom. Carried.**

**AYES: Sandstrom, Austin, Casillas**  
**NOES: Newman**  
**ABSENT: Pate**  
**ABSTENTIONS: None**

Ms. Via addressed the Commission requesting that a hearing be granted to determine the alleged violation(s) of the Civil Service Rules. And further she requests that any department involved in such violation(s) be publicly admonished.

Anthony Albers, Sr. Deputy County Counsel, emphatically stated that violation(s) of the Civil Service Rules had not occurred.

**Motion by Newman to deny Rule X hearing; seconded by Sandstrom. Carried.**

## **INCOMPATIBLE ACTIVITY**

### **Findings**

20. Mary Gwen Brummitt, Outside Hearing Officer: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Gary Higgins**, former Recordable Documents Specialist I, appealing an Order to Refrain from Incompatible Activity from the Assessor/Recorder/County Clerk.

### **FINDINGS AND RECOMMENDATIONS:**

The matter of the appeal of Gary Higgins from a written Order to Refrain from Incompatible Activity (outside employment) in his class and position of Recordable Documents Specialist I (Class No. 2917) in the Office of the Assessor/Recorder/County Clerk, was duly noticed and came on for hearing on April 3, 2003. Employee was hired in August 2002 as a Recordable Documents Specialist I ("RDS I"). At the time of his hiring, he was a licensed California attorney engaged in private practice. Employee alleges that the Department ordered him to discontinue his legal practice and that such order was in violation of public policy. He also asserts that his private practice did not constitute a conflict of interest with his employment with the County. For its part, the Department alleges that upon hiring, Employee promised that he would discontinue his private practice after a short wind-down period and that his practice was incompatible with his duties as an RDS I. However, Employee failed probation before this appeal hearing. At the Commission hearing, both Employee and the Department argued that the appeal should nevertheless be heard. The Department noted that Employee appeared determined to litigate the matter and that an appeal hearing could be useful in resolving certain issues or preventing litigation. Upon consulting with the Commission's legal advisors, the hearing officer determined that Employee's appeal is clearly moot as a result of his probationary dismissal, and therefore, had no discretion to hear the appeal. Therefore, it is recommended that Employee's appeal be dismissed; that the Commission read and file this report; and that the



proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Newman to approve Findings and Recommendations;  
seconded by Sandstrom. Carried.**

#### **OTHER MATTERS**

##### **Civil Service Rules Amendment**

21. **Michael Kolb**, Labor Relations Manager, reporting back to the Civil Service Commission concerning the addition of a new Civil Service Rule XV (Peace Officers' Administrative Appeal to Civil Service Commission from Adverse Citizens' Law Enforcement Review Board Finding).

RECOMMENDATION: Approve Rule and forward to the Board of Supervisors.

**Staff recommendation approved.**

##### **Extension of Temporary Appointments**

22. Health and Human Services Agency

A. 1 Quality Assurance Program Manager (Cynthia Paes)

B. 1 Stock Clerk (Richard White)

C. 2 Residential Care Worker Trainees (Stephanie Alvarez, Deweese Priestler)

D. 3 Residential Care Workers I (Kelsey Dix, Melody Cortes, Corazon Lyons)

23. Department of Human Resources

1 ERP System Specialist (Xiaofeng Li)

24. Department of General Services

1 Imaging Technician Trainee (James Myler)

25. Department of Animal Control

1 Animal Care Attendant (Nancy Holmes)

RECOMMENDATION: Ratify Item Nos. 22-25.

**Item Nos. 22-25 ratified.**

26. Public Input.

As President of the Civil Service Commission, Barry I. Newman directed staff to schedule a Special Meeting of the Commission to discuss proposed budget reductions within the Department.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE MAY 21, 2003.**

**\* The identity of the peace officer is held confidential per Penal Code Section 832.7 (San Diego Police Officers' Association, et al. v. City of San Diego Civil Service Commission).**